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**ALTERNATIVE DISPUTE RESOLUTIONS (ADR) PROGRAM**

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**FOR THE GOVERNOR:**

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*The Adjutant General*

**OFFICIAL:**

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**History.** This is a new publication.

**Summary.** The following describes the process and procedures related to the Adjutant General's Alternative Dispute Resolution (ADR) Program for the State of California. The decision by this agency to use a dispute resolution procedure shall be at the discretion of the agency and shall not be subject to judicial review. ADR does not challenge the chain of command, the authority of managers, supervisors, or the open door policy to receive complaints; ADR is designed to concentrate on dispute resolution.

**Applicability.** The following applies to all activities managed by the Adjutant General. It pertains to all employees, former employees, and applicants for federal and state employment in the California National Guard, to include volunteers. Where the provisions of this pamphlet differ from any agreement or regulation or any negotiated agreement with an exclusive representative, the provisions of such agreement or regulation are controlling.

**Proponent and exception authority.** The proponent of this circular is the State ADR Advocate (CAJS-HR-EEO/EO).

**Suggested Improvements.** Users are encouraged to send comments and suggested improvements to the Adjutant General of California, ATTN: CAJS-HR-EEO/EO, 9800 Goethe Road, Sacramento, CA 95827.

**Interim Changes.** Interim changes are not official unless authenticated by the State ADR Advocate (CAJS-HR-EEO/EO).

**Distribution.** Distribution of this circular is A and F.

## **1. Purpose.**

The primary purpose of the ADR program is to provide a responsive, expert and inexpensive means of resolving employee disputes as an alternative to long formal proceedings.

## **2. Policy.**

The policy of the Adjutant General is to encourage and provide a wide range of techniques to assist with complaint resolution at the earliest stage and before a formal complaint is filed.

*a.* All military members and employees not covered by a negotiated agreement of the California National Guard are encouraged to participate. Election to participate by bargaining unit members may occur after the member has made contact with his/her appropriate exclusive representative.

*b.* The aggrieved/complainant/disputant is responsible for compliance with procedural requirements.

*c.* Mediation is the preferred Department of Defense (DoD), ADR method used to resolve disputes.

*d.* The commander/manager/supervisor receiving a complaint may voluntarily offer mediation under the ADR program.

*e.* Mediators must complete approved training, be certified and verified by the State ADR Advocate or designated representative. Staff Judge Advocate (SJA), Labor Relations Office (LRO) and Equal Employment/Equal Opportunity Office (EEO/EO) will maintain a roster of mediators.

*f.* The SJA, LRO or EEO/EO will determine the mediator to be utilized during an ADR conference. When circumstances dictate, National Guard Bureau (NGB)-EO/SJA/LRO EEO/EO may utilize mediators from the private sector providing participants agree.

*g.* The entity requesting ADR will pay all associated costs.

*h.* The aggrieved/complainant/disputant and/or the resolution official may end mediation at any time and reinstate the formal processing of the complaint or grievance.

*i.* A Memorandum of Understanding (MOU) will be accomplished with other agencies providing mediation services to supplement the California roster of mediators. The MOU's will be maintained and updated by the SJA.

## **3. References.**

This ADR process is designed pursuant to statutory requirements in accordance with the authority contained in:

*a.* 5 U.S.C. 581 et seq., the Administrative Dispute Resolution Act of 1990 (Public Law 101-552), Public Law 104-320 (Amending Public Law 101-648, Public Law 102-354).

*b.* Title 29 Code of Federal Regulations, Part 1614, Civil Rights Act of 1991.

*c.* NGR 27-1/ANGI 51-12.

## **4. Objectives.**

ADR primary objectives are designed to concentrate on dispute resolution by:

*a.* Establishing a confidential and non-adversarial process of reconciling differences between voluntary participants at an informal stage to achieve resolution.

*b.* Providing resolution officials the authority to effect changes and/or make decisions required to resolve complaints.

*c.* Providing neutral, third-party intervention to assist in identifying the interests and needs of the participants and provide remedies for resolution.

*d.* Avoiding litigation and allowing for expeditious resolution of complaints.

*e.* Improving work environments by fostering open, trusting relationships within the California National Guard workforce.

*f.* Providing a non-abrasive atmosphere to facilitate open and positive communications between the disputing participants.

## **5. Responsibilities.**

*a.* The Adjutant General will:

- (1) Sponsor and promote the ADR process.
- (2) Appoint the State ADR Advocate.
- (3) Provide necessary resources to support the ADR program.
- (4) Designate resolution officials with appropriate authority to approve and comply with resolution agreements.
- (5) Designate the ADR panel and intake offices composed of, but not limited to, representatives from SJA, LRO, EEO/EO, Inspector Generals Office (IG).

*b.* The ADR panel will:

- (1) Meet semi-annually (January and July) to evaluate the ADR program's effectiveness by reviewing and analyzing the types, causes, trends, savings and costs associated with workplace disputes.
- (2) Provide a roster of trained and certified mediators.
- (3) Advertise and promote the use of ADR statewide.
- (4) Provide ADR training for commanders, managers, employees, facilitators, Equal Opportunity Advisors (EOAs), Military Equal Opportunity Officers (MEO), Special Emphasis Program Managers (SEPMs) and third party neutrals, to educate and inform the workplace on ADR processes, methods and procedures.
- (5) Recommend corrective actions to ensure continuous improvements for preventing complaints.

*c.* The State ADR Advocate or designated representative will:

- (1) Schedule and coordinate mediation sessions, to include availability of SJA, LRO, EEO/EO, IG and resolution officials as required to facilitate resolution agreements.
- (2) Coordinate suitable locations for mediation conferences with access to administrative support.
- (3) Maintain copies of all mediation settlement agreements.
- (4) Maintain a roster of all mediators and their certifications.
- (5) Provide consultation to the appropriate intake office and the mediator to ensure compliance with governing laws and regulations.
- (6) Consult with the appropriate management officials when coordinating settlement agreements.

*d.* HRO or designated representative will provide personnel information and guidance, as appropriate, to facilitate support of mediation and dispute resolutions.

## **6. Alternative Dispute Resolution Process.**

*a.* After an employee or military member makes contact with his/her supervisor or management official for the purpose of addressing a dispute, mediation may be offered by contacting the intake office.

*b.* If mediation is accepted, a request for ADR/mediation is submitted to the intake office. See enclosure 1-1, Agreement to Mediate. Information is gathered by the intake official for the purpose of determining appropriateness for mediation.

*c.* When the issue is determined to be suitable for mediation, the State ADR Advocate or designated representative will assign a mediator, unless circumstances dictate otherwise.

(1) Reasonable efforts will be made to schedule mediation within two (2) weeks from the date of determination.

(2) A pre-mediation briefing may be scheduled to familiarize the participants with the ADR process.

(3) Statements made during the mediation process are confidential and notes prepared during the session will be destroyed at the conclusion of the session. The ADR team will maintain only those records needed to support statistical reporting.

(4) A mediator will determine what documents and participants are necessary for mediation.

(5) The mediator facilitates the mediation process and may caucus with the parties, individually or jointly, when appropriate.

- (6) A mediator may stop the session at anytime when:
  - (a) There is no progress toward a resolution.
  - (b) The complaint is withdrawn.
  - (c) The formal complaint process is elected. This will be the start date for bargaining unit members governed under a negotiated grievance procedure.
- (7) The mediators are exempt as witnesses if the complaint continues through an administrative process or litigation.

*d. The Aggrieved/Complainant/Disputant:*

- (1) Identifies the specifics that gave rise to the complaint.
- (2) Participates in good faith during mediation.
- (3) Cooperates in efforts toward reaching a settlement agreement.
- (4) Signs the resolution agreement upon settlement.
- (5) Is responsible for compliance with employee responsibilities in the settlement agreement.
- (6) Understands that mediation procedures may be offered and used throughout the ADR process.

*e. The Resolution Official:*

- (1) Participates in good faith during mediation.
- (2) Cooperates in the resolution efforts and signs the resolution agreement upon acceptance.
- (3) Participates in recommending remedies and corrective actions to prevent like problems.

*f. Representatives:* The aggrieved party and/or management may have a representative present during mediation. However, a mediator may restrict participation of the represent-atives to appropriate caucus only.

*g. The Mediator:*

- (1) Explains the ground rules, the role of the mediator, and the confidentiality of the process.
- (2) Assists participants to create a mutually acceptable document, clarifies the terms of the agreement and explains their responsibility for compliance.
- (3) Keeps all information related to the mediation process confidential **except threats of violence, criminal activity or disclosure of fraud waste and abuse.**
- (4) Concludes the mediation process when one of following occurs.
  - (a) An agreement is reached and resolution is signed.
  - (b) The complaint or grievance is withdrawn.
  - (c) There is no resolution after good-faith effort.
  - (d) Either party stops the mediation process.
- (5) Reduces the terms of the settlement to writing, in three sets, and has each party sign and date each copy of the settlement agreement with the mediator signing and serving as witness.
- (6) Ensures all notes taken during the mediation process are destroyed at the conclusion of the mediation session.
- (7) Coordinates the proposed settlement agreement with NGB, SJA, HRO, LRO, EEO/EO, IG, Governmental agencies and Exclusive Representatives, as appropriate and on a need-to-know basis.
- (8) Ensures that agreement is specific, measurable, achievable, realistic and with the appropriate timeframe.
- (9) Ensures EEO complaint settlements comply with requirements of NGR 27-1 /ANGI 51-12.
- (10) Provides each participant with an original, signed settlement agreement.
- (11) Provides the SJA and the intake office with a copy of the settlement agreement.

**7. Areas where ADR may not be appropriate:**

- a.* Any issue involving a violation of law, policy or standard.
- b.* When statutory timelines cannot be met or waived.
- c.* When a definitive or authoritative resolution would establish a precedent.

- d.* When the resolution involves significant questions of government-wide policy.
- e.* When the matter significantly affects persons or organizations that are not participant to the proceedings.
- f.* When the agency must maintain jurisdiction on the matter.
- g.* When a full public record of the proceedings is important and/or required.
- h.* Where there is physical, mental or sexual assault.

**8. The State ADR Advocate will track the following:**

- a.* Total number of complaints.
- b.* Total number of each type of case referred to the ADR process.
- c.* Total number of ADR cases resolved through mediation.
- d.* Total number of ADR cases in which no resolution was reached.
- e.* Average time of mediation.
- f.* Costs/Savings:
  - (1) Personnel time
  - (2) Administrative costs
  - (3) Mediation costs
  - (4) Travel and per diem costs
  - (5) Training costs
  - (6) Equipment costs
  - (7) Litigation costs
  - (8) Court costs

**9. Evaluation Procedures.**

- a.* The ADR team will track cases throughout their respective areas on a monthly basis for the semi-annual ADR meeting and analysis.
- b.* The ADR team will collect and provide the statistical summaries from the designated representative upon request.
- c.* The State ADR Advocate or designated representative will collect and provide the statistical summaries not later than 15 October annually to Complaints Management Division (NGB-EO), Jefferson Plaza #1, 1411 Jefferson Highway, Arlington, Virginia 22202-3231.
- d.* The ADR team will make recommendations to the Adjutant General as appropriate.

**PRIVACY ACT STATEMENT**

- 1. Authority: Section 6311 of Title 5 U. S. Code authorizes collection of this information.
- 2. Principal Purpose(s): Primary use of this information is by management and the Equal Employment Office for the Alternative Dispute Resolution Program. Additional disclosures of the information may be, to the National Guard Bureau, Equal Employment Opportunity Commission, or a court that determines the disclosure is necessary to prevent an injustice, establish a violation of law, or prevent serious harm to the public health or safety.
- 3. Routine use of this information is specifically for enumerated circumstances.
- 4. Furnishing the required information on the ADR forms is voluntary, but failure to provide the information prevents the use of the ADR program to resolve the dispute. If the agency uses information furnished on these forms for purposes other than indicated above, it may provide you with an additional statement reflecting those purposes.

## **GLOSSARY**

**ADR** - Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, or any combination thereof.

**Aggrieved/Complainant/Disputant** - An individual identifying circumstance(s) of concern.

**Caucus** - Separate session with each of the participants.

**Complaint/Grievance** - Applies to any circumstance or condition that creates a dispute.

**Confidentiality** - That neither the neutral nor the participants shall voluntarily disclose or be compelled to disclose a dispute resolution communication in any type of case or proceeding.

**Mediation** - The intervention of a neutral and impartial third party into the situation in question.

**Mediator** - Neutral and impartial third party who is trained in ADR techniques and has been certified as a mediator.

**Resolution Official** - Management official who is authorized to engage in resolution discussions and execute settlement agreements.

**Settlement Agreement** - A written document that clarifies the terms of the mutual agreement between the participants that is in compliance with legal and regulatory guidelines.

**State ADR Advocate** - Any one of the following offices can be contacted to request ADR assistance. The Equal Employment Office, Equal Opportunity Office, Staff Judge Advocate, Inspector General's Office, Human Resource Office and/or the Labor Relations Office.

## AGREEMENT to MEDIATE

This is a voluntary agreement between \_\_\_\_\_

And

\_\_\_\_\_

to mediate with the intention of reaching a consensual settlement of the dispute. The following provisions of this agreement are as follows:

1. The mediator(s) is a neutral party who will assist the parties to reach their own settlement. The mediator will not issue decisions about the case nor will he/she impose decisions on the parties.
2. The mediator(s) will not offer advice or legal counsel. If the parties need legal advice about their rights, obligations, and legal interests, they should seek the services of legal counsel.
3. It is understood that in order for mediation to work, open honest communication is essential. All written and oral communication submitted during mediation will be treated as privileged information and is confidential. The parties agree that the mediator shall not be compelled to divulge such records or to testify in any judicial or adversary proceeding. Any party that violates this agreement shall pay all fees and expenses of the mediator and other parties, including reasonable attorney's fees, incurred in opposing the efforts to compel testimony or records from the mediator.
4. It is understood that both parties will provide complete and honest disclosure of all relevant information and documents. Prior to the first session, the parties will provide the mediator with enough information for the mediator to understand the issue(s) in dispute.
5. It is understood that the mediator will not serve as a representative or witness for either party before, during, or after the mediation.
6. While both parties intend to continue with mediation until a settlement is reached, it is understood that either party may withdraw from mediation at any time. It is also understood that the mediator may terminate mediation due to impasse or any reason the mediator finds appropriate.
7. If an agreement is reached, the mediator(s) will prepare a settlement agreement. The parties recognize that they may have the settlement agreement reviewed independently by their attorney or representative before the agreement is finalized.
8. There shall be no tape recording or stenographic record of the mediation.

I have read, understand and agree to each of the provisions of this agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name